

STATE OF CALIFORNIA  
Budget Change Proposal - Cover Sheet  
DF-46 (REV 08/15)

Fiscal Year 2016-17	Business Unit 0890	Department Secretary of State	Priority No. 007
Budget Request Name 0890-006-BCP-BR-2016-GB		Program <b>0705-ELECTIONS</b>	Subprogram

Budget Request Description  
Placement Agent Lobby Registration Workload

Budget Request Summary

The Secretary of State (SOS) requests 1.0 positions and an augmentation of \$79,000 in FY 2016-17 (\$74,000 of which is on-going) in General Fund expenditure authority to be used specifically for handling the workload resulting from a change in California law in 2010 requiring placement agents to register as lobbyists. At the time the change was enacted, the SOS had no basis for estimating how many placement agents would be registering as lobbyists and had to rely on estimates provided by outside sources. Based on these estimates, the SOS did not request additional staff. However, in subsequent years, workload statistics show that the actual increase in the number of registered lobbyists is three times the number anticipated during legislative deliberations, representing an unexpected, dramatic increase in on-going workload. In addition, the nature and business practices of placement agents are very different from other lobbyists and this has dramatically increased staff time required to process and administer these types of registrations.

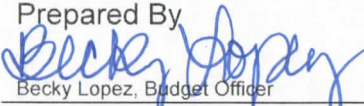



Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed
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Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO	Date
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For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the Department of Technology, or previously by the Department of Finance.

☐ FSR ☐ SPR Project No. Date:


If proposal affects another department, does other department concur with proposal? ☐ Yes ☐ No  
*Attach comments of affected department, signed and dated by the department director or designee.*

Prepared By  Becky Lopez, Budget Officer	Date DECEMBER 23, 2015	Reviewed By  Kristin Dagsher, Fiscal Affairs Manager	Date DECEMBER 23, 2015
Department Director  Cindy Hanneman, Chief, Mgmt Svc Div	Date DECEMBER 23, 2015	Agency Secretary  Kimberly L. Gauthier, Deputy SOS, Operations	Date DECEMBER 23, 2015

Department of Finance Use Only

Additional Review: ☐ Capital Outlay ☐ ITCU ☐ FSCU ☐ OSAE ☐ CALSTARS ☐ Dept. of Technology

BCP Type: ☐ Policy ☐ Workload Budget per Government Code 13308.05

PPBA 	Date submitted to the Legislature 11/2/16
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## Analysis of Problem

### A. Budget Request Summary

The Secretary of State (SOS) requests an augmentation of one additional position at the Program Technician III (PT III) level and \$79,000 (\$74,000 on an ongoing basis) from the General Fund. The request is based on the resulting lobbying registration workload due to a change in California law in 2010 requiring placement agents to register as lobbyists. At the time the change was enacted, the SOS had no basis for estimating how many placement agents would be registering as lobbyists and had to rely on estimates provided by outside sources. Based on these estimates, the SOS did not request additional staff. However, the workload has nearly doubled in size and the complexity of the work has also greatly increased. Lobbyist registration during a two-year session has increased from an average of 1,254 during the preceding three, two-year sessions, to an average of 2,237 since enactment of the law. Similarly, the number of lobbyist employers, who must also register, has increased from an average of 275 to 659 during that same time period. Additionally, placement agents are typically unfamiliar with the lobbying registration process, have complex business relationships that do not match the lobbyist-firm-client relationship, engage in business practices that are short-lived and do not match the two-year registration cycle for lobbyists, and are, unlike traditional lobbyists, not often based locally, but are from financial centers located throughout the world. For all these reasons, additional staff is needed to meet the requirements of the law.

### B. Background/History *(Provide relevant background/history and provide program resource history. Provide workload metrics, if applicable.)*

Placement agents can generally be described as persons who facilitate investment “partnerships” between public retirement systems and private investors, but are not employees of the private investment firm, investment portfolio managers, or parties to the investment deal. In 2010, legislative concerns were raised about the role of placement agents in the investment practices of public retirement systems. Concerns were prompted, in particular, by public reports about the activities of a former California Public Employee Retirement System (Cal/PERS) board member who became a placement agent and had reportedly earned \$59 million in placement agent fees. The investigation of the relationship between the former CalPERS board member and a CalPERS CEO, led to federal charges that have resulted in a guilty plea by the CalPERS CEO to bribery and fraud charges and indictment of the former CalPERS member. In response to these “unregulated activities,” AB 1743 (Chap 668, Stats of 2010) was enacted. As noted, the law legally defines placement agents as lobbyists, and, in part, requires placement agents to register as lobbyists. However, there are also complex provisions that exempt certain individuals from the definition of a placement agent. During the legislative process, it was estimated that approximately 300 placement agents would register as lobbyists. Bill analyses noted, “[t]here are approximately 50-70 placement agent firms in California,” and “a small number of CalPERS and California State Teachers Retirement System (CalSTRS) investments would be impacted...roughly 20 percent of CalPERS investments,” while “[a]t CalSTRS...only two placement agent deals were made in all of 2009.” The SOS had no basis on which to disagree with these estimates.

In practice, the number of placement agents registering is more than triple the original estimates and the increase in employer registration associated with placement agents is even more dramatic. During the three legislative sessions prior to enactment of AB 1743, an average of 1,254 lobbyists and 275 employers were registered with the SOS. During the two legislative sessions following enactment of AB 1743, which includes placement agents and their employers, an average of 2,237 lobbyists and 659 employers were registered. Additionally, placement agents have fundamentally different characteristics and business practices that make the registration process more labor-intensive than that for registration of a traditional lobbyist because:

- Unlike lobbyists, placement agents have temporary business relationships with employers. The registration forms are created for lobbyists who typically remain registered with the same employer while it takes on different clients. The forms do not easily accommodate placement agents who register “when they need to,” terminate as lobbyists when a particular business relationship ends, and later re-register with another employer when the need to be registered arises again.

## Analysis of Problem

- The lobbying registration and reporting requirements and forms were created to depict relationships and activities of traditional lobbying entities. Additional workarounds in the system must be done to capture similar information for placement agents and their employers.
- The combination of placement agents being unfamiliar with lobbying registration and reporting requirements and the forms and requirements not matching their employment and compensation practices causes the agents and their employers to be more prone to making errors, which requires follow-up and corrective action by SOS staff.
- Placement agents are often not located in Sacramento, in close proximity to SOS offices. This precludes hand delivery of documents when necessary; hand delivery can be critical when quick registration or correction is required because all registration documents must be completed on paper and require a manual/wet signature. In fact, many placement agents are not located in California, but are out of the county, making written and telephone contact very difficult and expensive. Staff time is spent identifying a contact within the United States and obtaining an appropriate e-mail address to allow efficient contact.
- Finally, lobbyists must attend a mandatory ethics course within a specified period of time after they register. SOS staff track each registration to ensure that the ethics course is completed in the time allowed. Failure to timely attend the ethics course is cause for registration revocation. Because many placement agent lobbyists tend to be located far from the Sacramento area where the ethics training is given, often the required training is not completed by the deadline. The workload associated with tracking and notifying a placement agent lobbyist of an impending suspension and then taking necessary follow-up steps is more difficult and time-consuming due to their brief tenure and location. In the meantime, the placement agents continue to actively lobby.

### Resource History (Dollars in thousands)

Program Budget	PY - 4	PY - 3	PY - 2	PY - 1	PY
Authorized Expenditures	N/A	N/A	N/A	N/A	N/A
Actual Expenditures	N/A	N/A	N/A	N/A	N/A
Revenues	N/A	N/A	N/A	N/A	N/A
Authorized Positions	N/A	N/A	N/A	N/A	N/A
Filled Positions	N/A	N/A	N/A	N/A	N/A
Vacancies	N/A	N/A	N/A	N/A	N/A

### Workload History

Workload Measure	PY - 4	PY - 3	PY - 2	PY - 1	PY	CY
Lobbyist Registration	1,222	2,359	2,359	2,333	2,333	2,021
Employer Registration	257	617	617	717	717	645

## C. State Level Considerations

The SOS is required to meet the mandates of the Political Reform Act. Those mandates now include the registration of placement agents as lobbyists. The goal of this specific mandate, effective January 1, 2011, is to ensure that there is additional transparency surrounding the practice of using placement agents to facilitate public-private investment partnerships. This mandate is consistent with the SOS's mission articulated in its Strategic Plan to, "...provide public access to campaign and lobbying financial information." Three other state agencies are dependent on the SOS placement agent registration program – the Fair Political Practices Commission (FPPC), which enforces provisions of the Political Reform Act relating to lobbying and non-filing of lobbying financial and activity disclosure reports, and CalPERS and CalSTRS, both which interact with placement agents, some of whom must be registered as lobbyists. The Legislature also has a keen interest in timely registration of traditional lobbyists –

## Analysis of Problem

those who lobby the Legislature – and are integral to the legislative process. The cascading effect of a significantly higher than anticipated registration workload due to the requirement to register placement agents, negatively impacts the registration and enforcement program for all lobbyists. There is no anticipated opposition to this workload BCP. All parties affected, including lobbyists, have an interest in an efficient and timely registration program.

### D. Justification

This request is based on a need to address an unanticipated workload resulting from a change in legislation, AB 1473, for which, in 2010, there was no reliable statistical information on which to base a BCP. This request is to handle only the workload associated with this legislation and does not expand or add any new functionality to the program. As noted, there has been a significant increase in workload associated with AB 1743 – resulting in a near doubling of lobbying and tripling of employer registrations. This has caused a persistent backlog in the registration function, currently performed by one PT III, which has had to be addressed by regular re-direction of other staff resources in an attempt to keep the backlog manageable. However, this re-direction of staff has negatively impacted the timely completion of other mandated duties, including maintaining the lobbying change log (a history of changes to lobbying relationships), reviewing campaign and lobbying statements, processing fines for late filing of reports, non-filer referrals to the FPPC, and monitoring lobbyist participation in mandated ethics courses including revoking/suspending lobbying registration when necessary. The addition of one PT III position would address the workload increase in lobbying registration and eliminate, to a large extent, the need to re-direct resources. Without additional personnel, these impacts will persist. As noted, the SOS accepted the initial estimate in the number of placement agents that might register as lobbyists when the bill was analyzed in the Legislature, which was too low by a factor of three, and operated the program through an additional two-year registration cycle to determine whether the dramatic initial increase and the difficulties associated with placement agent registration could be explained by “growing pains” associated with a new program. Based on actual experience, however, it is clear that the workload will persist, and that placement agents will continue to be “problematic” in the registration process due to the nature of their business practices. It is also clear that the workload associated with placement agent registration is not cyclical. Traditional lobbyists tend to register and re-register for several successive legislative sessions in their ongoing employment relationships. The re-registration for each session occurs at or close to the statutorily designated time-period – that is during November through December of the year preceding the two-year session. Although lobbyists’ relationships with employers or firms change during those two years, the lobbyists remain registered. Placement agent lobbyists register throughout the year, as the need arises, change business relationships frequently, and, in some cases, terminate their registration. Traditional lobbyists create a cyclical registration workload just before the start of a legislative session that is addressed by temporary re-direction of up to three-quarters of the Political Reform Division (PRD) staff resources to handle the heavy initial re-registration workload. Thereafter, activities associated with maintaining lobbying registrations require a staff of one to two PT IIIs. In contrast, placement agent lobbyists register throughout the year, consistently requiring a higher level of staff resources.

### E. Outcomes and Accountability *(Provide summary of expected outcomes associated with Budget Request and provide the projected workload metrics that reflect how this proposal improves the metrics outlines in the Background/History Section.)*

The addition of one PT III position, devoted entirely to workload associated with lobbying registration activities documented through duty statements and management controls, will ensure that registrations are current and backlogs are eliminated. This will not, however, eliminate the need for re-direction of staff during the traditional, statutorily-identified lobbying registration period.

#### Projected Outcomes

Workload Measure	CY	BY	BY+1	BY+2	BY+3	BY+4
Lobbyist Registration	2,021	2,237	2,237	2,237	2,237	2,346
Employer Registration	645	645	645	645	645	667



## Analysis of Problem

### F. Analysis of All Feasible Alternatives

#### **Alternative 1: Approve the request for one PT III position**

With the addition of the one PT III, the SOS will be able to adequately address the on-going increase in workload associated with placement agents being required to register as lobbyists. This will eliminate the persistent backlog in lobbying registration as well as the need to redirect staff resources from other mandated duties, which in turn creates backlogs in those areas. The cost of this alternative is General Fund resources of \$79,000 initially, and \$74,000 on an ongoing basis.

#### **Alternative 2: Do nothing**

The SOS could continue to redirect staff resources to this high-priority workload to ensure that the registration is kept current at the expense of other mandated duties.

#### **Alternative 3: Assign these duties to another state agency**

Based on the perceived needs and the dramatically underestimated impact to the SOS's programs, legally defining placement agents as lobbyists was determined by the Legislature as the most appropriate policy approach. However, based on actual programmatic experience, the number of placement agents and employers of placement agents and the complexity of the business relationships that trigger placement agent registration, establishing the program at CalPERS or CalSTRS seems appropriate. There may be policy and fiscal considerations that make this alternative unattractive as it assigns the registration program to the agency that is also engaged in the relationship with placement agents. This may create a perception of a conflict of interest, even though this agency has the expertise necessary to oversee the program and a co-equal interest in encouraging ethical and transparent activities. The cost of creating the program at another state agency would be higher, as well, because those agencies do not have an existing infrastructure to register placement agents. This alternative requires new legislation.

### G. Implementation Plan

Until final approval of the BCP through the 2016-17 budget process, the SOS will continue to re-direct resources and/or require mandatory overtime to address backlogs, as needed. Upon approval of the state budget, the SOS would use existing duty statements and an existing classification to advertise and fill the new positions. A reasonable range of time associated with the hiring process is three to five weeks. Thereafter, the incumbents will undergo a one-on-one training program with personnel most experienced with lobbying registration activities. Following a two-to-three week training period, the new staff will assume full responsibility for lobbying registration duties with final work product review by experienced staff. After that time, it is anticipated that new staff would be able to work with only general supervision.

### H. Supplemental Information *(Describe special resources and provide details to support costs including appropriate back up.)*

None.

### I. Recommendation

Alternative 1: Approve the request for one PT III and \$79,000 (\$74,000 of which is on-going) in expenditure authority from the General Fund to address a dramatic, unanticipated increase in workload associated with lobbying registration resulting from the addition of placement agents via legislation effective January 1, 2011. The workload increase has been clearly documented, and actual experience has demonstrated that this new type of "lobbyist" presents additional workload by the nature of the unique business practices that are different from traditional lobbyists. No other alternative provides as immediate or certain resolution of the issue. The purpose – to improve transparency around placement agent activities – and the need for the program have already been demonstrated; this proposal merely supports the workload associated with the program.

## BCP Fiscal Detail Sheet

BCP Title: Placement Agent Lobby Registration Workload

DP Name: 0890-006-BCP-DP-2016-GB

### Budget Request Summary

	FY16					
	CY	BY	BY+1	BY+2	BY+3	BY+4
Positions - Permanent	0.0	1.0	1.0	1.0	1.0	1.0
<b>Total Positions</b>	<b>0.0</b>	<b>1.0</b>	<b>1.0</b>	<b>1.0</b>	<b>1.0</b>	<b>1.0</b>
Salaries and Wages						
Earnings - Permanent	0	42	42	42	42	42
<b>Total Salaries and Wages</b>	<b>\$0</b>	<b>\$42</b>	<b>\$42</b>	<b>\$42</b>	<b>\$42</b>	<b>\$42</b>
Total Staff Benefits	0	19	19	19	19	19
<b>Total Personal Services</b>	<b>\$0</b>	<b>\$61</b>	<b>\$61</b>	<b>\$61</b>	<b>\$61</b>	<b>\$61</b>
Operating Expenses and Equipment						
5301 - General Expense	0	13	8	8	8	8
5302 - Printing	0	1	1	1	1	1
5304 - Communications	0	1	1	1	1	1
5306 - Postage	0	1	1	1	1	1
5322 - Training	0	1	1	1	1	1
5344 - Consolidated Data Centers	0	1	1	1	1	1
<b>Total Operating Expenses and Equipment</b>	<b>\$0</b>	<b>\$18</b>	<b>\$13</b>	<b>\$13</b>	<b>\$13</b>	<b>\$13</b>
<b>Total Budget Request</b>	<b>\$0</b>	<b>\$79</b>	<b>\$74</b>	<b>\$74</b>	<b>\$74</b>	<b>\$74</b>

### Fund Summary

Fund Source - State Operations						
0001 - General Fund	0	79	74	74	74	74
<b>Total State Operations Expenditures</b>	<b>\$0</b>	<b>\$79</b>	<b>\$74</b>	<b>\$74</b>	<b>\$74</b>	<b>\$74</b>
<b>Total All Funds</b>	<b>\$0</b>	<b>\$79</b>	<b>\$74</b>	<b>\$74</b>	<b>\$74</b>	<b>\$74</b>

### Program Summary

Program Funding						
0705 - Elections	0	79	74	74	74	74
<b>Total All Programs</b>	<b>\$0</b>	<b>\$79</b>	<b>\$74</b>	<b>\$74</b>	<b>\$74</b>	<b>\$74</b>

**Personal Services Details**

		<b>Salary Information</b>								
Positions		Min	Mid	Max	<u>CY</u>	<u>BY</u>	<u>BY+1</u>	<u>BY+2</u>	<u>BY+3</u>	<u>BY+4</u>
VR00 - Various					0.0	1.0	1.0	1.0	1.0	1.0
<b>Total Positions</b>					<b>0.0</b>	<b>1.0</b>	<b>1.0</b>	<b>1.0</b>	<b>1.0</b>	<b>1.0</b>
Salaries and Wages		<b>CY</b>	<b>BY</b>	<b>BY+1</b>	<b>BY+2</b>	<b>BY+3</b>	<b>BY+4</b>			
VR00 - Various		0	42	42	42	42	42	42		
<b>Total Salaries and Wages</b>		<b>\$0</b>	<b>\$42</b>	<b>\$42</b>	<b>\$42</b>	<b>\$42</b>	<b>\$42</b>	<b>\$42</b>		
Staff Benefits										
5150900 - Staff Benefits - Other		0	19	19	19	19	19	19		
<b>Total Staff Benefits</b>		<b>\$0</b>	<b>\$19</b>	<b>\$19</b>	<b>\$19</b>	<b>\$19</b>	<b>\$19</b>	<b>\$19</b>		
<b>Total Personal Services</b>		<b>\$0</b>	<b>\$61</b>	<b>\$61</b>	<b>\$61</b>	<b>\$61</b>	<b>\$61</b>	<b>\$61</b>		